

Docket No.: 826.1909

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Nobuhiro RIKITAKE et al.

Serial No. 10/721,548

Group Art Unit: 2151

Confirmation No. 6279

Filed: November 26, 2003

Examiner: Nghi V. Tran

For: COMMUNICATIONS SYSTEM, AND COMMUNICATION DEVICE AND NETWORK
MANAGEMENT DEVICE, WHICH ARE USED THEREIN

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

This is responsive to the Office Action mailed August 9, 2007, having a shortened period for response set to expire on September 9, 2007, the following remarks are provided.

I. Provisional Election of Claims Pursuant to 37 CFR §1.142

Applicants provisionally elect claims Group I, claims 1-12 in response to the restriction requirement set forth in the Office Action.

II. Applicants Traverse the Requirement

Insofar as Group II is concerned, it is believed that claims 15 and 16 are so closely related to elected claims 1-12 that they should remain in the same application. The elected claims 1-12 are directed to "a communication system used in a network where a plurality of communication nodes are connected including a digital wrapper unit, a converting unit, and a network management unit" and claims 15 and 16 are drawn to a "network management device used in the communication system" of claim 1 (see claims 2 and 4).

There have been no references cited to show any necessity for requiring restriction and, in fact, it is believed that the Examiner would find references containing both communication system and network management device claims in the same field of technology. While it is noted that the Examiner has identified different classifications for the communication system and

network management device claims, it is believed that classification is not conclusive on the question of restriction.

It is also believed, moreover, that evaluation of claims 1-12 with claims 15 and 16 would not produce an undue burden upon the Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter recited by the Group II, claims 15 and 16 by filing a divisional application. When the Examiner searches for prior art with respect to system claims 2 and 4, the Examiner will be searching for the device of claims 15 and 16. The Examiner is requested to compare the recitations of claims 2 and 4 with the recitations of claims 15 and 16, respectively. From such a comparison the Examiner will understand that claims 15 and 16 are not independent of claims 1-12

MPEP §803 sets forth the criteria for restriction between patentably distinct inventions. (A) indicates that the inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05-806.05(i)); and (B) indicates that there must be a serious burden on the Examiner if restriction is required (see MPEP §803.02, §806.04(a)- §806.04(i), §808.01(a) and §808.02). The Examiner has not set forth why there would be a serious burden if restriction is required. It has been submitted that claims 15 and 16 are not independent of claims 1-12, particularly claims 2 and 4.

Even if the Examiner considers claims 13 and 14 to be a separate invention from claims 1-12, the Applicants respectfully request the Examiner to consider claims 1-12 and 15-16 together.

III. Conclusion

Upon review of references involved in this field of technology, when considering that the device recited by the Group II, claims 15 and 16 claims are directed to a device, and elected claims 1-12, particularly claims 2 and 4, are also directed to such a device, and when all of the other various facts are taken into consideration, it is believed that upon reconsideration of the Examiner's initial restriction requirement, claims 1-12 , 15 and 16 of the pending claims should be examined in the subject application.

If any further fees are required in connection with the filing of this Response, please charge the same to our deposit account number 19-3935.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,
STAAS & HALSEY LLP

Date: September 10, 2007

By: /J. Randall Beckers/
J. Randall Beckers
Registration No. 30,358

1201 New York Ave, N.W., Ste. 700
Washington, D.C. 20005
(202) 434-1500